

Assembly Bill No. 1288

CHAPTER 370

An act to amend Sections 2900 and 2901 of, and to add Section 2901.5 to, the Probate Code, relating to public guardians and conservators.

[Approved by Governor September 30, 2011. Filed with
Secretary of State September 30, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1288, Gordon. Public guardians and conservators: authority: property held in trust.

Existing law authorizes a county public guardian or conservator to take temporary possession or control of real and personal property of a person in the county who requires a guardian or conservator, as specified, if the property is subject to loss, injury, waste, or misappropriation. Existing law authorizes a public guardian to issue a written certification for purposes of taking possession or control of property in this regard, which may be recorded and which is effective for 15 days after the date of issuance. Existing law requires a financial institution or other person, without inquiring into the truth of the written certification and without court order being issued, to provide the public guardian information concerning property held in the sole name of the proposed ward or conservatee and to surrender to the public guardian property of the proposed ward or conservatee that is subject to loss, injury, waste, or misappropriation. Existing law immunizes the financial institution or other person from any liability for any act or omission of the public guardian with respect to the property.

This bill would authorize a public guardian or public conservator, if he or she intends to apply for appointment as the guardian or conservator of a person domiciled in the county, to restrain the transfer, encumbrance, or disposal of real or personal property held in a trust for that person, if certain requirements are met, except as specified. The bill would prescribe a certification form in this regard, which may be recorded in the case of real property, and which may be provided to a financial institution. The bill would require a financial institution that receives the certification to provide information to the public guardian or public conservator and to restrain the transfer, encumbrance, or disposal of the property at issue without the necessity of inquiring into the truth of the certification and without court order or letters being issued. The bill would also extend to 30 days the period that the written certification issued for purposes of taking possession or control of property is effective.

The people of the State of California do enact as follows:

SECTION 1. Section 2900 of the Probate Code is amended to read:

2900. (a) (1) If the public guardian or public conservator determines that the requirements for appointment of a guardian or conservator of the estate are satisfied and the public guardian or public conservator intends to apply for appointment, the public guardian or public conservator may take possession or control of real or personal property of a person domiciled in the county that is subject to loss, injury, waste, or misappropriation, and, subject to subdivision (b), may deny use of, access to, or prohibit residency in, the real or personal property, by anyone who does not have a written rental agreement or other legal right to the use of, or access to, the property.

(2) (A) Except as provided in subparagraph (C), if the public guardian or public conservator determines that the requirements for appointment of a guardian or conservator of the estate are satisfied and the public guardian or public conservator intends to apply for appointment as the guardian or conservator of a person domiciled in the county, the public guardian or public conservator may restrain any person from transferring, encumbering, or in any way disposing of any real or personal property held in a trust, provided all of the following requirements are met:

(i) The real or personal property held in the trust is subject to loss, injury, waste, or misappropriation.

(ii) The proposed ward or conservatee is a settlor of the trust.

(iii) The proposed ward or conservatee has a beneficial interest in the trust to currently receive income or principal from the trust.

(iv) The proposed ward or conservatee holds a power to revoke the trust.

(B) During the period of any restraint under this paragraph, the property subject to the restraint shall continue to be retained as property of the trust pending termination of the restraint or further court order. The public guardian or public conservator shall provide notice of any action taken under this paragraph to all of the persons required to be noticed pursuant to Section 17203, to the extent the public guardian or public conservator has access to the trust documents or is otherwise able to determine the persons entitled to receive notice. Any settlor, trustee, or beneficiary may petition the court for relief from any action taken by the public guardian or public conservator under this paragraph.

(C) This paragraph shall not apply if a current trustee or cotrustee is a spouse of the proposed ward or conservatee and that spouse is also a settlor of the trust, unless the public guardian or public conservator determines that the real or personal property held in the trust is subject to substantial loss, injury, waste, or misappropriation.

(b) The authority provided to the public guardian and public conservator in subdivision (a) includes the authority to terminate immediately the occupancy of anyone living in the home of an intended ward or conservatee, other than the intended ward or conservatee, and the authority to remove any such occupant residing therein, subject to the following requirements:

(1) The public guardian or public conservator shall first determine that the person whose occupancy is to be terminated has no written rental agreement or other legal right to occupancy, and has caused, contributed to, enabled, or threatened loss, injury, waste, or misappropriation of the home or its contents. In making this determination, the public guardian or public conservator shall contact the intended ward or conservatee and the occupant, advise them of the proposed removal and the grounds therefor, and consider whatever information they provide.

(2) At the time of the removal, the public guardian or public conservator shall advise the intended ward or conservatee and the occupant that a hearing will be held as provided in paragraph (3).

(3) The public guardian or public conservator shall file a petition regarding removal, showing the grounds therefor, to be set for hearing within 10 days of the filing of the petition and within 15 days of the removal. The person removed and the intended ward or conservatee shall be personally served with a notice of hearing and a copy of the petition at least five days prior to the hearing, subject to Part 2 (commencing with Section 1200) of Division 3. The right of the public guardian or public conservator to deny occupancy by the removed person to the premises shall terminate 15 days after removal, unless extended by the court at the hearing on the petition. The court shall not grant an extension unless the public guardian or public conservator has filed a petition for appointment as guardian or conservator of the estate.

(c) If the public guardian or public conservator takes possession of the residence of an intended ward or conservatee under this section, then for purposes of Section 602.3 of the Penal Code, the public guardian or public conservator shall be the owner's representative.

SEC. 2. Section 2901 of the Probate Code is amended to read:

2901. (a) A public guardian who is authorized to take possession or control of property under this chapter may issue a written certification of that fact. The written certification is effective for 30 days after the date of issuance.

(b) The written recordable certification shall substantially comply with the following form:

“CERTIFICATE OF AUTHORITY

THIS IS AN OFFICIAL CERTIFICATE ENTITLING THE PUBLIC GUARDIAN TO TAKE POSSESSION OF ANY AND ALL PROPERTY BELONGING TO THE FOLLOWING INDIVIDUAL:

(Name of Individual) _____

This Certificate of Authority has been issued by the Public Guardian pursuant to and in compliance with Chapter 1 (commencing with Section 2900) of

Part 5 of Division 4 of the California Probate Code. Under California law, this Certificate of Authority authorizes the Public Guardian to take possession or control of property belonging to the above-named individual.

SPECIAL NOTE TO FINANCIAL INSTITUTIONS:

State law requires that upon receiving a copy of this Certificate of Authority, financial institutions shall provide the public guardian with information concerning property held by the above-named individual and surrender the property to the Public Guardian if requested.

This Certificate of Authority shall only be valid when signed and dated by the Public Guardian or a deputy Public Guardian of the County of _____ and affixed with the official seal of the Public Guardian below.

This Certificate of Authority expires 30 days after the date of issuance.

Signature of Public Guardian:

Date:

Official Seal”

(c) The public guardian may record a copy of the written certification in any county in which is located real property of which the public guardian is authorized to take possession or control under this chapter.

(d) A financial institution or other person shall, without the necessity of inquiring into the truth of the written certification and without court order or letters being issued:

(1) Provide the public guardian information concerning property held in the sole name of the proposed ward or conservatee.

(2) Surrender to the public guardian property of the proposed ward or conservatee that is subject to loss, injury, waste, or misappropriation.

(e) Receipt of the written certification:

(1) Constitutes sufficient acquittance for providing information and for surrendering property of the proposed ward or conservatee.

(2) Fully discharges the financial institution or other person from any liability for any act or omission of the public guardian with respect to the property.

SEC. 3. Section 2901.5 is added to the Probate Code, to read:

2901.5. (a) A public guardian or public conservator, who is authorized to restrain any person from transferring, encumbering, or in any way disposing of any real or personal property held in a trust in accordance with paragraph (2) of subdivision (a) of Section 2900, may issue a written certification of that fact. The written certification is effective for 30 days after the date of issuance.

(b) The written recordable certification shall substantially comply with the following form:

“CERTIFICATE OF AUTHORITY

THIS IS AN OFFICIAL CERTIFICATE ENTITLING THE PUBLIC GUARDIAN/PUBLIC CONSERVATOR TO RESTRAIN ANY PERSON FROM TRANSFERRING, ENCUMBERING, OR IN ANY WAY DISPOSING OF ANY REAL OR PERSONAL PROPERTY HELD IN THE FOLLOWING TRUST:

(Name of Trust) _____

THE PUBLIC GUARDIAN/PUBLIC CONSERVATOR HAS DETERMINED THAT IT HAS AUTHORITY TO ISSUE THIS CERTIFICATE WITH RESPECT TO THE ABOVE-NAMED TRUST AND IN CONNECTION WITH PROCEEDINGS THAT ARE OR WILL BE PENDING RELATED TO THE FOLLOWING INDIVIDUAL:

(Name of Individual) _____

This Certificate of Authority has been issued by the Public Guardian/Public Conservator pursuant to and in compliance with Chapter 1 (commencing with Section 2900) of Part 5 of Division 4 of the California Probate Code. Under California law, this Certificate of Authority authorizes the Public Guardian/Public Conservator to restrain any person from transferring, encumbering, or in any way disposing of any real or personal property held in the above-named trust.

SPECIAL NOTE TO FINANCIAL INSTITUTIONS:

State law requires that, upon receiving a copy of this Certificate of Authority, financial institutions shall provide the public guardian/public conservator with information concerning property held in the above-named trust and shall restrain any person from transferring, encumbering, or in any way disposing of any real or personal property held in the above-named trust.

This Certificate of Authority shall only be valid when signed and dated by the Public Guardian/Public Conservator or a deputy Public Guardian/Public Conservator of the County of _____ and affixed with the official seal of the Public Guardian/Public Conservator below.

This Certificate of Authority expires 30 days after the date of issuance.

Signature of Public Guardian/Public Conservator:

Date:

Official Seal”

(c) The public guardian or public conservator may record a copy of the written certification in any county in which is located real property held in

a trust as to which the public guardian or public conservator has determined it has authority to issue the written certification.

(d) A financial institution or other person who is provided with the written certification by the public guardian or public conservator shall, without the necessity of inquiring into the truth of the written certification and without court order or letters being issued:

(1) Provide the public guardian or public conservator information concerning any real or personal property held in the trust identified in the written certification.

(2) Restrain any person from transferring, encumbering, or in any way disposing of any real or personal property, held in the trust identified in the written certification.

(e) Receipt of the written certification:

(1) Constitutes sufficient acquittance for providing information and for restraining any person from transferring, encumbering, or in any way disposing of any real or personal property held in the trust identified in the written certification.

(2) Fully discharges the financial institution or other person from any liability for any act or omission of the public guardian or public conservator with respect to the property.